

June 4, 2009

By Electronic Mail

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Regulation Comments, Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Re: OTS-2009-0006

Re: Docket No. R-1314

Ms. Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: RIN 3133-AD62

This comment letter is submitted by USAA Federal Savings Bank ("USAA") in response to the proposed rule (the "Proposed Rule") clarifying the new regulations regarding unfair or deceptive acts or practices ("UDAP Rule") and the Official Staff Commentary ("Commentary") issued by the Board of Governors of the Federal Reserve System ("Board"), the Office of Thrift Supervision, and the National Credit Union Administration (collectively, "Agencies"). USAA believes that the Proposed Rule addresses important issues and will be helpful to both issuers and consumers. However, several provisions raise concerns, including those related to promotional rates on existing accounts, balance transfers, and protected balances.

Promotional Rates to Existing Accounts

The Agencies propose to clarify that "if the consumer receives advance notice of the term of a discounted rate and the rate that will apply after that term expires, a promotional stepped rate offer on an existing account can provide the same benefits to consumers as a promotional stepped rate offer at account opening so long as the offer cannot be used to increase the rate that applies to preexisting balances." The Agencies propose to make this clarification by adding comment 24(b)(3)-4 stating that "[n]othing in § __.24 prohibits a [creditor] from lowering the annual percentage rate that applies to existing balances or to new transactions. However, once the lower rate is applied to an existing balance, the [creditor] cannot subsequently increase the rate on that balance unless it provided the consumer with advance notice of the increase pursuant to [Regulation Z]."

USAA requests further clarification specifically providing that a promotional rate may be increased after the promotional term expires to the rate stated in the promotional rate offer (subject to the exceptions that the Agencies have set forth in the proposed comments). We ask

the Agencies, in addition to adding the comments in the Proposed Rule, to amend the regulation by adding a new promotional rate exception to § __.24 as follows:

(6) Promotional Rate Exception. A promotional annual percentage rate offered after account opening disclosures are provided for a category of transactions may be increased to a rate disclosed in the promotional-rate offer upon expiration of a period of time disclosed in the promotional-rate offer. This exception does not permit raising the rate on a balance that existed before making the promotional-rate offer above the annual percentage rate that applied to such balance at the time of the promotional-rate offer.

Balance Transfers

The Agencies propose to add comments 21(c)-3 to clarify that the protections of the UDAP Rule continue to apply to an outstanding balance following the transfer of a balance to another credit account (not limited to a credit card account) issued by the same institution or its affiliates or subsidiaries. We believe this proposal is unnecessary and will harm consumers.

First, the Proposed Rule will put a creditor who has an existing relationship with a consumer in a worse position than its competitors. This could lead to consumer dissatisfaction and harm customer relationships. As a member-owned institution, USAA is particularly concerned that our members will be unable to consolidate debts into a new loan that might have a slightly higher rate than the USAA credit card account but which will greatly reduce the monthly payments and overall interest on all outstanding debt. USAA will not be able to offer the same benefits that an unaffiliated lender can offer. Moreover, the other lender may not be able to provide the same low rates as USAA.

Second, USAA is concerned about cardholders who acquire other accounts or loans from USAA and then use the proceeds to payoff a USAA credit card account. For example, a consumer might take out a personal loan at a higher rate than the balance on a USAA credit card account and then pay off that credit card account. While the Agencies might be concerned about why a consumer would choose to pay a higher interest rate, a consumer could reasonably borrow at a higher rate to reduce his overall monthly payments.

APR Increases

Under § __.24(b)(3), an APR may be increased for transactions that occur more than seven days (14 days under the Credit CARD Act) after provision of a change in terms notice under Regulation Z. Balances that exist prior to this 7-day (or 14-day) period are "protected balances." The Commentary states that an institution may apply an increased APR pursuant to § __.24(b)(3) to transactions that are authorized within seven days, but are settled more than seven days, after provision of the applicable notice under Regulation Z. The Proposed Rule, however, would revise this to indicate that the date of the transaction for purposes of § __.24(b)(3) is determined by the actual date of the transaction, regardless of when the transaction was authorized, settled, or posted. Furthermore, the Agencies state that if a merchant places a "hold" on the available credit on an account for an estimated transaction amount, the date of the transaction is the date on which the merchant "determines the actual transaction amount."

In light of the change from 7 days under the UDAP Rule to 14 days under the CARD Act, we request that the Agencies provide a simple rule that will be easy for card issuers to administer and that is fair to consumers. Whatever is the outstanding balance on an account as of the end of the 14th day after the date the creditor provides notice of a rate increase is the protected balance. Anything that posts to the account thereafter is subject to the new higher rate regardless of when the transaction was authorized, the transaction date, or whether it was subject to a merchant “hold.” The additional 7 days in the CARD Act provide consumers plenty of notice while reducing operational costs to card issuers that would be required to determine transaction dates and other information.

Servicemembers Civil Relief Act

The Agencies have proposed to clarify § __.24 in circumstances pertaining to the Servicemembers Civil Relief Act (“SCRA”). Specifically, an APR that has been decreased pursuant to the SCRA may be increased once the SCRA no longer applies, provided that the increased rate does not exceed the APR that applied prior to the period of military service. As a significant lender to the military community, USAA has a large number of credit card accounts that are subject to the SCRA. On such accounts, we provide a lower rate than is mandated by the SCRA. Additionally, we provide other special rates to members who are deployed or who have a permanent change of station and we offer a refund of all finance charges that accrue while a member is on a military campaign.

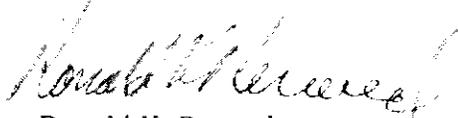
Once a member is no longer eligible to receive our SCRA or other special military rates, we move the balances to the APRs set forth in the member’s credit card agreement that are in effect at the time. We do not move the balances to another promotional rate that may have applied during the SCRA period if that other promotional rate has expired in the interim. We ask the Agencies to consider revising the Proposed Rule to permit an increase in the APR to a level that would be permitted if the SCRA protections or other account benefit had not been applied to the account. For example, a military member may have an account with an introductory 7.9% APR in the first year and 10.9% thereafter. If a card issuer provides a 6% rate under the SCRA in the first year (when the APR would have been 7.9%), and removed in the fourth year (when the APR would be 10.9%), the APR on the SCRA balances should be permitted to increase to the 10.9% APR.

Two-Cycle Billing

The Agencies propose to amend the Commentary pertaining to the prohibition on two-cycle billing to clarify that the prohibition does not prohibit an institution from charging accrued interest under a deferred interest program if the balance is not paid in full prior to the specified date. Likewise, we ask the Agencies to further clarify that the two-cycle billing ban does not affect the operation of a normal grace period. This is particularly important in light of Section 102 of the CARD Act adding a provision regarding prohibition on double-cycle billing and penalties for on-time payments that prohibits a creditor from imposing a finance charge as a result of the loss of a grace period with respect to “any balances or portions thereof in the current billing cycle that were repaid within such time period.” USAA request that the Agencies provide guidance on how this CARD Act provision affects the UDAP Rule.

Again, USAA appreciates the opportunity to provide comments on the Proposed Rule. If you have any questions regarding our comments, please do not hesitate to call me at (210) 498-1098.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ronald K. Renaud".

Ronald K. Renaud
AVP Executive Attorney
Banking Counsel